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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/738,471	12/15/2000	Peter M. Black	600189-186	9663
61834	7590	10/18/2007		
DREIER LLP 499 PARK AVE NEW YORK, NY 10022			EXAMINER FRENEL, VANEL	
			ART UNIT 3627	PAPER NUMBER
			MAIL DATE 10/18/2007	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 09/738,471	<b>Applicant(s)</b> BLACK ET AL.	
	<b>Examiner</b> Vanel Frenel	<b>Art Unit</b> 3627	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 31 August 2007.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 25-28,30,33,37 and 46-50 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 25-28,30,33,37 and 46-50 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 8/31/07 has been entered.

#### **Notice to Applicant**

2. This communication is in response to the RCE filed on 8/30/07. Claims 46, 49-50 have been amended. Claims 25-28, 30, 33, 37 and 46-50 are pending.

### ***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 25-28, 30, 33, 37 and 46-50 are rejected under 35 U.S.C. 103(a) as being unpatentable over Miller et al (2002/0022963) in view of Levine et al (5,745,681) and further in view of Makuch et al (6,330,592).

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(A) As per claim 25, Miller discloses the method wherein the selected file is at least one of a link, a document, and or a thumbnail (See Miller, Page 11, Paragraphs 0141-0143).

(B) As per claim 26, Miller discloses the method further comprising:  
receiving notice of a user request for the web page, said user request being received after the execution of said selecting (See Miller, Page 11, Paragraphs 0144-0146).

(C) As per claim 27, Miller discloses the method wherein said parsing comprises: performing a statistical word frequency analysis of the content to discover the one or more keywords (See Miller, Page 13, Paragraph 0186).

(D) As per claim 28, Miller discloses the method wherein analyzing at least one metatag in the web page to discover the one or more keywords (See Miller, Page 11, Paragraphs 0139-0142).

(E) As per claim 30, Miller discloses the method wherein said analyzing is executed to detect a plurality of contexts for the web page, and wherein said selecting is executed to select a plurality of products corresponding to the plurality of contexts, the method further comprising: ranking the plurality of contexts and the plurality of products (See Miller, Page 11, Paragraphs 0153-0155).

(F) As per claim 33, Miller discloses the method wherein said analyzing is executed to detect a plurality of contexts for the requested web page, and wherein said selecting is executed to select a plurality of products corresponding to the plurality of contexts, the method further comprising: contexts, the method further comprising: ranking the plurality of contexts and the plurality of products, such that said displaying is executed to display the plurality of products in accordance with the ranking (See Miller, Page 11, Paragraphs 0153-0155).

(G) As per claim 37, Miller discloses the method further comprising: receiving notice of a user request for the web page, said user request being received prior to the execution of said analyzing or said selecting (See Miller, Page 13, Paragraphs 0188-0192).

(H) As per claim 46, Miller discloses a computer implemented method of selecting at least one file representing at least one product, the file relating to a web page on the World Wide Web (See Miller, Page 17, Paragraph 0250), the method comprising: receiving the web page having content therein (See Miller, Page 8, Paragraph 0098; Page 9, Paragraph 0110); analyzing the web page to detect a context for the web page (See Miller Page 9, Paragraph 0109).

Miller does not explicitly disclose selecting at least one file representing at least one product related to the detected context.

However, this feature is known in the art, as evidenced by Levine. In particular, Levine suggests selecting at least one file representing at least one product related to the detected context (See Levine, Col.4, lines 48-67 to Col.5, line 22).

It would have been obvious to one of ordinary skill in the art at the time of the invention to have included the feature of Levine within the system of Miller with the motivation of providing a page file generator generating the shopping page file and embedding the shopping cart field in the shopping page file (See Levine, Col.2, lines 43-45).

In addition, Miller and Levine do not explicitly disclose that the method having using a statistical analysis of the web page content.

However, this feature is known in the art, as evidenced by Makuch. In particular, Levine suggests that the method having using a statistical analysis of the web page content (See Makuch, Col.5, lines 61-67).

It would have been obvious to one of ordinary skill in the art at the time of the invention to have included the feature of Makuch within the collective teaching of Miller and Levine with the motivation of categorizing content in a website and associating viewed categorized content with a user to develop a visitor profile (See Makuch, Col.3, lines 27-30).

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(I) As per claim 47, Miller discloses the method of claim 46, wherein said analyzing comprises:

parsing the content of the web page to discover one or more keywords published as part of the content (See Miller Page 11, Paragraph 0145); and  
evaluating the one or more keywords to detect the context (See Miller, Page 12, Paragraph 0161).

(J) As per claim 48, Miller discloses the method wherein said evaluating comprises:  
comparing the one or more keywords with a synonym to detect the context (See Miller Page 12, Paragraph 0161).

(K) As per claim 49, Miller discloses a method of selecting and displaying at least one file representing at least one product, the file relating to a web page on the World Wide Web (See Miller, Page 11, Paragraphs 0151-0153), the method comprising:

receiving notice of a user request for a web page (See Miller, Page 13, Paragraphs 0191-0193);

receiving the requested web page having content therein (See Miller Page 8, Paragraph 0098; Page 9, Paragraph 0110);

analyzing the requested web page to detect a context for the requested web page (See Miller Page 9, Paragraph 0109);

producing a second page including the requested web page and the file (See Miller, Page 11, Paragraph 0153); and

displaying the second page to the user (See Miller, Page 11, Paragraph 0153).

Miller does not explicitly disclose selecting at least one file representing at least one product related to the detected context.

However, this feature is known in the art, as evidenced by Levine. In particular, Levine suggests selecting at least one file representing at least one product related to the detected context (See Levine, Col.4, lines 48-67 to Col.5, line 22).

It would have been obvious to one of ordinary skill in the art at the time of the invention to have included the feature of Levine within the system of Miller with the motivation of providing a page file generator generating the shopping page file and embedding the shopping cart field in the shopping page file (See Levine, Col.2, lines 43-45).

In addition, Miller and Levine do not explicitly disclose that the method having using a statistical analysis of the web page content.

However, this feature is known in the art, as evidenced by Makuch. In particular, Levine suggests that the method having using a statistical analysis of the web page content (See Makuch, Col.5, lines 61-67).

It would have been obvious to one of ordinary skill in the art at the time of the invention to have included the feature of Makuch within the collective teaching of Miller and Levine with the motivation of categorizing content in a website and associating viewed categorized content with a user to develop a visitor profile (See Makuch, Col.3, lines 27-30).



(L) Claim 50 differs from claims 46 and 49 by reciting a computer readable storage medium including computer executable code for selecting at least one file representing at least one product.

As per this limitation, it is noted that Miller discloses the file relating to a web page on the World Wide Web, the code enabling the steps of:

receiving the web page having content therein (See Miller Page 8, Paragraph 0098; Page 9, Paragraph 0110);

analyzing the web page to detect a context for the web page (See Miller Page 9, Paragraph 0109) and Levine discloses selecting at least one file representing at least one product related to the detected context (See Levine, Col.4, lines 48-67 to Col.5, line 22).

Therefore, it is readily apparent that these prior art system utilize a computer readable storage medium including computer executable code for selecting at least one file representing at least one product to perform their specified function.

The remainder of claim 50 is rejected for the same reasons given above for claims 46 and 49, and, are incorporated herein.

In addition, Miller and Levine do not explicitly disclose that the method having using a statistical analysis of the web page content.

However, this feature is known in the art, as evidenced by Makuch. In particular, Levine suggests that the method having using a statistical analysis of the web page content (See Makuch, Col.5, lines 61-67).

It would have been obvious to one of ordinary skill in the art at the time of the invention to have included the feature of Makuch within the collective teaching of Miller and Levine with the motivation of categorizing content in a website and associating viewed categorized content with a user to develop a visitor profile (See Makuch, Col.3, lines 27-30).

### ***Response to Arguments***

5. Applicant's arguments filed on 8/30/07 with respect to claims 46, 49 and 50 have been considered but are moot in view of the new ground(s) of rejection. Applicant's arguments will be addressed in the order in which they appear in the response filed on 8/31/07.

(A) At pages 6-8 of the 8/31/07 response, Applicant argues that the features in the 8/31/07 amendment are not taught by or suggested by the applied references.

In response, all of the limitations which Applicant disputes as missing in the applied references, including the features newly added in the 8/31/07 amendment, have been fully addressed by the Examiner as either being fully disclosed or obvious in view of the collective teachings of Miller, Levine and/or Makuch based on the logic and sound scientific reasoning of one ordinarily skilled in the art at the time of the invention, as detailed in the remarks and explanations given in the preceding sections of the Office Action, and incorporated herein. One cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references.

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See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981), *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

In addition, the test for obviousness is not whether the features of a secondary reference may be bodily incorporated into the structure of the primary reference, nor is it that the claimed invention must be expressly suggested in any one or all of the references. Rather, the test is what the combined teachings of the references would have suggested to those of ordinary skill in the art. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981).

### ***Conclusion***

6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The cited but not the applied art teaches classification method and apparatus (6,976,207).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Vanel Frenel whose telephone number is 571-272-6769. The examiner can normally be reached on 6:30am-5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Zeender Ryan Florian can be reached on 571-272-6790. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

  
Vanel Frenel

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October 8, 2007